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09/775,585	02/05/2001	E. Stephen Crandall	1999-0735-CIP	9273
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SHINGLES, KRISTIE D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

09/775,585

Applicant(s)

CRANDALL, E. STEPHEN

Examiner

KRISTIE D. SHINGLES

Art Unit

2444

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendments

No claims have been amended.
Claims 1-38 have been cancelled.

Claims 39-54 are pending.

Response to Arguments

I. Applicant's arguments with respect to claims 39 and 46, see Remarks filed 5/17/2010, with respect to the rejection(s) of claims 39-50 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of *Picco et al* (USPN 6,029,045) and *Godwin* (US 6,741,834).

Claim Rejections - 35 USC § 101

II. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

III. **Claims 39-45 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The methods of these claims fail to recite the machine or apparatus hardware responsible for performing the claimed steps and therefore would be mental steps which do not qualify as a statutory process (see *In re Bilsky*, 545 F.3d 943, 88 USPQ2d 1385 (Fed.Cir.2008)).

Claim Rejections - 35 USC § 103

IV. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

V. **Claims 39 – 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Picco et al* (US 6,029,045) in view of *Andros et al* (US 5,045,850) in further view of *Godwin* (US 6,741,834).**

a. **Per claims 39 and 46** (differ only by statutory class), *Picco et al* teach the method for receiving performance content over a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the performance content by determining whether stored performance content is out-of-date, wherein the stored performance content is determined to be out-of-date based on a performance content class of the stored performance content (*col.6 line 57-col.7 line 2*);
- selecting a process for obtaining the performance content from at least one of a plurality of performance transmitters (*col.2 lines 49-58, col.4 line 66-col.5 line 22, col.14 lines 58-67*);
- executing the process for obtaining the performance content from the at least one of the plurality of performance transmitters (*col.5 lines 2-54, col.6 lines 1-24*); and

- generating the pseudo-live performance by mixing content corresponding to a portion of the performance content with other content, wherein, determining whether stored performance content is out-of-date further comprises: (*col.5 lines 55-65*) and
- determining whether the time-stamp of the stored performance content matches the time of the latest update of the stored performance content (*col.6 line 61-col.7 line 12*).

Yet *Picco et al* fail to explicitly teach wherein the stored performance content is determined to be out-of-date based on a performance content class of the stored performance content; obtaining the needed performance content from at least one of a plurality of performance transmitters based on a range of global positioning system (GPS) coordinates that can receive a broadcasting signal from the at least one of the plurality of performance transmitters; and determining whether stored performance content is out-of-date further comprises: transmitting a query to determine a time of a latest update of the stored performance content, accessing a time-stamp of the stored performance content and receiving the time of latest update of the stored performance content in response to the transmitting of the query. However *Andros et al* teach that a user in a network may elect to receive updates for different types of content (sports, weather, stocks) at different times, wherein the content is updated at different frequencies according to its type and source (*col.12 line 64-col.13 line 22*). Furthermore, *Godwin* teaches receiving geographic coordinates from a satellite GPS receiver based on a range of coordinates for location parameters for broadcasting the media content to the user devices and determining the latest update of the content from a time tag of the content (*col.7 line 23-col.9 line 10*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Picco et al* with *Andros et al* and *Godwin* for the

purpose of determining that stored data is old or out-of-date by comparing latest update time values and updating different types of content at different rate. Maintaining the date and time of content modifications are common techniques used in the art for effectively implementing updates, synchronizing data and keeping track of the current version of stored content in order to keep the stored content up-to-date. It is obvious that different types of network content have different expiration times and therefore require more or less frequent update checking depending on the type of content. Furthermore it would have been obvious to use a GPS in the system that identifies the location with a range of coordinates of a user in order for the system to provide content to the user that is related to and associated with the user's global location.

b. **Per claim 40**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 39, *Picco et al* further teach the method further comprising: accessing a profile wherein the profile indicates one or more of: a type of content desired by an end-user; a schedule of an end-user; and scheduled times at which content is transmitted by the at least one of the plurality of performance transmitters (*col.3 lines 1-13 and 30-37, col.6 lines 23-41, col.13 line 40-col.14 line 12*).

c. **Claim 47** is substantially similar to claim 40 and is therefore rejected under the same basis.

d. **Per claim 41**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 39, *Picco et al* further teach the method further comprising determining whether a performance transmitter is capable of receiving and responding to a content request, wherein the determining further comprises at least one of: transmitting a query signal to the at least one of the plurality of performance transmitters; passively receiving a signal from the at least one of the plurality of performance transmitters; and accessing a profile (*col.7 line 55-col.8 line 6, col.10 lines 52-62*).

e. **Claim 48** is substantially similar to claim 41 and is therefore rejected under the same basis.

f. **Per claim 42**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 39, *Picco et al* further teach the method further comprising: generating a content request; and transmitting the content request to the at least one of the plurality of performance transmitters via the network (*col.8 lines 19-55*).

g. **Claim 49** is substantially similar to claim 42 and is therefore rejected under the same basis.

h. **Per claim 43**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 39, *Picco et al* further teach wherein the selecting the process comprises determining an appropriate time to receive information from a performance transmitter (*col.7 lines 9-54, col.9 lines 10-39*).

i. **Claim 50** is substantially similar to claim 43 and is therefore rejected under the same basis.

j. **Per claim 44**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 39, *Picco et al* further teach wherein generating the pseudo-live performance comprises: retrieving the other content; decoding at least one command of the other content; and performing at least one tasks instructed by the commands (*col.8 lines 7-22, col.9 line 61-col.11 line 17*).

k. **Claim 51** is substantially similar to claim 44 and is therefore rejected under the same basis.

l. **Per claim 45**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 44, *Picco et al* further teach wherein the at least one command includes at least one of: a programming command that executes a software program, a housekeeping command that performs at least one of loading, deleting, changing and overlaying stored content, and a performance command that reproduces stored content from a specified location of a storage device (*col.7 line 33-col.8 line 22; Ritter—col.4 lines 35-55*).

m. **Claim 52** is substantially similar to claim 44 and is therefore rejected under the same basis.

n. **Per claim 53**, *Picco et al* with *Andros et al* and *Godwin* teach the method of claim 39, *Picco et al* further teach wherein the performance content includes multimedia performance content (*col.5 lines 61-63, col.11 lines 44-67; Ritter—col.4 lines 20-34*).

o. **Claim 54** is substantially similar to claim 53 and is therefore rejected under the same basis.

Conclusion

VI. Examiner's Note: Examiner has cited particular columns and line numbers in the reference(s) applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the Applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the cited passages as taught by the prior art or relied upon by the examiner. Should Applicant amend the claims of the claimed invention, it is respectfully requested that Applicant clearly indicate the portion(s) of Applicant's specification that support the amended claim language for ascertaining the metes and bounds of Applicant's claimed invention.

VII. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristie D. Shingles/
Examiner, Art Unit 2444